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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.710 OF 2003

1) Kamalabai Laxman Jadhav)

2) Laxman Bhimasha Jadhav)

3) Maryappa Laxman Jadhav)
R/o. Settlement Free Colony No.1)
Solapur.)
(At present lodged in Yerwada Central)
Prison, Pune.)).. APPELLANTS

VERSUS

1) The State of Maharashtra)

2) Bhimava Hanumant Gaikwad)
resident of Nilam Nagar, M.I.D.C.)
Solapur.).. RESPONDENTS

Mr.Ujwal Agandsurve, Advocate, for the Appellants.

Smt.V.R. Bhosale, Additional Public Prosecutor,
for Respondent State.

CORAM: V.G. PALSHIKAR, Acg. C.J. &
SMT.NISHITA MHATRE, J.

DATED: 31ST AUGUST 2006

ORAL JUDGMENT : (PER PALSHIKAR, Acg.C.J.)

. Being aggrieved by the judgment and order of conviction recorded on 31st March 2003 by the 4th Additional Sessions Judge, Solapur in Sessions Case No.204 of 2002, the Appellants hereinabove have preferred this Appeal on the grounds mentioned in the Memorandum of Appeal as also verbally canvassed before

us by the learned Advocate for the Appellants.

2. With the assistance of the Advocate for the Appellant and the Additional Public Prosecutor, we have scrutinised the the record and reappreciated the evidence on record. Facts giving rise to the prosecution, stated briefly, are as under.

3. Accused No.1 is wife of Accused No.2 and mother of Accused No.3. They are related to the victim who had lent Accused No.1 a sum of Rs.40,000/- as needed by the accused. Inspite of passage of substantial period, the money was not returned and the victim was therefore insisting on repayment, demand for which was made on several occasions. On 26th August 2002, the deceased Hanmant went to the house of accused at about 8.15 p.m. and claimed return of the amount earlier advanced by him. At that time, the accused persons told him that they will not return the money, abused him and drew him out of the house. The followed the accused on the street and caught hold of his hands. Accused No.2 pour kerosene on him and Accused No.1 put the victim on fire. The victim was carried to the hospital by his son-in-law where looking to his condition, dying declaration was recorded. In the said dying declaration the victim pointed out that he was put on fire by the accused persons as he was insisting on the return of the money

advanced by him to the accused. Subsequently, the victim succumbed to the injury. In view of the dying declaration recorded, First Information Report was recorded. Investigation was started and accused persons were arrested. On completion of investigation, they were charged under Section 302 of the Indian Penal Code. The prosecution in order to bring home the charge under Section 302 of the Indian Penal Code, examined seven witnesses and the learned trial Judge on appreciation of these evidence on record, came to the conclusion of guilt. He, therefore, sentenced them to suffer imprisonment for life. Hence, this Appeal by all the accused persons.

4. PW1 is the Police Head Constable Annarao Sharanappa Chikkale. He was on duty when he received the message that one person from Limayewadi received burn injuries and was admitted to the hospital. He, therefore, went to the hospital and requested the Medical Officer for his opinion as to whether the patient was in a fit condition to give his statement. The Medical Officer in presence of the witness, examined the patient, talked with him and endorsed a certificate to that effect on the paper that he was in a fit condition to give statement. Thereafter, the witness PW1 recorded the statement of the patient. He asked his name and address, noted it down and then proceeded to

record the statement. After it was complete, he read over the contents of the statement to the victim, who admitted them to be correct and therefore put thumb mark on the statement. Thereafter, the Medical Officer again made an endorsement that the patient was conscious throughout and was in a position to make this statement which is recorded. The witness identified the statement which is dying declaration and therefore it was duly exhibited. A perusal of the dying declaration clearly gives a very good description as to how the incident occurred. The victim has specifically named the persons who put him on fire. He has given the motive for doing so. The declaration bears the signature of the Doctor before and after the recording of the dying declaration.

5. PW2 is Dr.Madhusudan Hanmantrao Gunhalkar who was present in the hospital when the victim was admitted in the hospital. He has stated in cross that when the Head Constable came for recording the statement of the victim, he examined the patient and found him conscious and well oriented. He accordingly informed the police. Thereafter Head Constable, Buckle No.503 came and asked the witness PW2 Doctor his opinion regarding the consciousness of the patient. The Doctor again examined the patient and opined that the patient was in conscious and in a position to give his statement. He accordingly made a statement to that effect on the top of the paper

on which the dying declaration was recorded and he has in Court deposed as PW2 proved the endorsement as his own. Then, according to the witness, the statement was recorded by the Head Constable and on completion of the recording of the statement, the Doctor again examined the patient and certified that throughout the recording he was conscious and in a position to give the statement which was given and recorded in presence of the Doctor. He was duly cross-examined and there is nothing in his cross-examination which would require that the witness is liable to be disbelieved.

6. PW3 is Ramesh Chandrashekhar Jadhav. He is a panch witness who has turned hostile and was, therefore, cross-examined by the prosecution. His evidence consequently becomes useless.

7. PW4, Chidanand Bhimsing Dodmani, is another Medical Officer attached to the Civil Hospital, Solapur and was on duty on 26th August 2002 when the victim was admitted to the hospital. According to him, Special Executive Magistrate visited the hospital around 10 p.m. on 26th August 2002 and the Doctor examined the patient around 10.15 p.m. and found that the patient was conscious and was in a state of mind to give statement. He accordingly made an endorsement to that effect on the top of the paper. He identified the endorsement and

proves the same. Thereafter, the statement was recorded. The Doctor was present there. He again examined the patient and found him to be conscious and in a position to make this statement. He, therefore, again made such an endorsement on the bottom of paper on which the statement was recorded. He identified the endorsement as his. It was therefore duly exhibited. This recorded statement is Exhibit 28. A perusal thereof, shows that it bears the endorsement of the Doctor as deposed to by him and it very briefly states that the victim was put on fire by the accused persons. He has named the accused persons there. Relying on this dying declaration Exhibit 28, the learned Advocate appearing on behalf of the accused-Appellant, submitted that there is material variance between the two statements recorded by the police. In one, the victim has given detailed description as to how the incident occurred and in the second statement, Exhibit 28, a very brief statement is made that he has been put on fire by the accused and he does not want to say anything further. According to the learned Advocate, therefore, the dying declarations are liable to be rejected.

8. PW5 is the Special Executive Magistrate who has recorded this statement and has duly proved it. PW6 is also hostile and, therefore, his evidence is of no use to the prosecution. PW7 is the Investigating Officer.

It is on the basis of these evidence that the order of conviction was recorded by the learned trial Judge. As observed earlier, the main thrust of the learned Advocate appearing on behalf of the accused is on the dying declarations which, according to him, varying material particulars. We are unable to accept this submission as both the dying declarations are recorded in presence of Doctor. Both bear endorsement regarding consciousness and fitness of the victim to give statement. What has been stated in Exhibit 28, the second dying declaration, is substantially the same as Exhibit 12 which was recorded earlier as the dying declaration by the Head Constable Buckle No.503. It must be noted that Exhibit 28 was recorded between 10.15 and 10.30 in the night of 26th August 2002, whereas Exhibit 12 was recorded between 9.00 and 9.15 of the same day. Both the Doctors have deposed that the victim was burnt to the extent of 80% and therefore was getting weaker by seconds. Taking into consideration the deposition of the two Doctors who are independent of each other and two officials who recorded the statements, it is clear that during the recording of the statements the victim was conscious and in a position to give the statement. When his statement was sought to be recorded for second time within a hour’s span, the victim was tired and, therefore, the statement very briefly narrates what happened factually. That brief

statement materially corroborates what has been stated by the victim in presence of two others and an hour earlier. In such circumstances, in our opinion, there is no reason to discard the dying declarations recorded as per law by two independent authorities who have deposed about the condition of the victim to make these statements. In such circumstances, we are unable to accept the submission of the learned Advocate that because of the discrepancies in the dying declarations the accused deserves to be acquitted.

9. In the result, therefore, the Appeal fails and is dismissed.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)